
EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COPY

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PAULA PAGONAKIS,

Plaintiff,

vs.

EXPRESS, LLC, a/ka/a
LIMITED BRANDS, INC.,

Defendant.

* * * * *

Case No: 06-027

ORIGINAL

DEPOSITION OF

PAULA PAGONAKIS

11:11 a.m. - 12:23 p.m.

February 19, 2007

Charlottesville, Virginia

REPORTED BY: Kimberly L. Krett

1 want to go into detail on these, we've
2 already taken your deposition. I just want
3 to ask you a couple things here.

4 I see that on a number of dates it
5 reflects that you got up and -- like, for
6 example, on January 5th, if you'd turn to
7 6765, P6765?

8 A (Witness complies.)

9 Q If you look at January 5th, 2004,
10 "Dark and rainy today, later start today,"
11 and a number of other dates I look through
12 there that the weather was either bad roads
13 or not good visibility, that you started
14 work late; is that correct?

15 A Yes.

16 Q Okay.

17 A It's later than usual.

18 Q You had the flexibility to come in as
19 soon as you could get in?

20 A Well, I called, and -- if it looked
21 like I couldn't leave the house on time, I
22 called and checked to see what the status
23 was. You know, like here (indicating) this
24 date that you pointed out, "Dark and rainy
25 today, later start today," after I opened

1 five registers, I obviously got there in
2 enough time for pre-opening activities
3 because I opened registers. So I mean,
4 that's relative.

5 Q And I'm not trying -- I'm just saying
6 that it says, "Later start today." You got
7 in later than --

8 A That just means later than when I
9 normally leave. Sometimes I would leave
10 before I was scheduled to work and put time
11 in before, trying to, you know, balance
12 things out. I'll do that.

13 Q Well, the weather on -- for example,
14 on January 15th, if you look at 6772?

15 A (Witness complies.)

16 Uh-huh (yes).

17 Q "Dusting of snow on the ground today,
18 tried to get out, ended up getting a ride in
19 to work."

20 All Im asking is there was days where
21 the weather, either due to visibility or the
22 roads, you showed up to work later than you
23 were scheduled on the schedule?

24 A Yes.

25 Q Okay.

1 A But only after my job description
2 changed.

3 Q What do you mean by that?

4 A Because the job that I had before all
5 this mess started, I had more flexible time,
6 and that never happened.

7 Q What do you mean that never happened?

8 A When you have flexible job hours,
9 you're never late.

10 Q Okay. Well, you weren't considered
11 late, if you needed -- you were on the
12 schedule for, say, a 9 o'clock start, and if
13 the fog came in, you would show up at
14 whenever the fog let you get in; right?

15 A Right.

16 Q Okay. And I guess what you're saying
17 before is you just started whenever you got
18 in to work, that you're trying to get --

19 MR. EHRENBURG: I'm going to object
20 to the form. You can answer.

21 THE WITNESS: Say the question again.

22 BY MR. CAMPBELL:

23 Q I mean, what did you mean by your
24 flex time?

25 Was it just -- your time started --

1 A I was given tasks.

2 Q Okay.

3 A And then I had the flexibility to
4 schedule when I did the tasks.

5 Q Okay.

6 A So there was no such thing as late or
7 there was no such thing as it's foggy, I
8 can't work. I could work because I had
9 things that I could do on my home computer.
10 There was things I could do while I was
11 waiting for the fog to lift.

12 Q Okay.

13 A And if I had appointments, they were
14 typically in outreach stores that there was
15 some driving, and I had enough sense to make
16 sure I scheduled things to be able to be
17 there.

18 Q Okay.

19 A And so I never missed appointments,
20 and I never had that -- this same type of
21 problem with my previous job description.

22 Q Okay. Well, I mean, when you say
23 problem, was it just simply you were set to
24 come in at a certain time, and if the
25 weather wouldn't permit it or the darkness

1 wouldn't permit it, you would come in when
2 you could get in; right?

3 A Right.

4 Q Okay. I also see from this in
5 January or February it looks like about 4
6 o'clock is when you wanted to leave in order
7 to get home before the sun went down, near 5
8 o'clock p.m.?

9 A Yeah, that changes. No, I left a
10 half an hour before sundown. And when I had
11 to be on the schedule, I would check every
12 morning on my computer when the sun would go
13 down.

14 Q Okay.

15 A And I knew how much time it would
16 take me to get home. And I would try and
17 factor in what if there's traffic at some
18 particular point. And I pretty much, you
19 know, had it kind of to a science, as long
20 as nothing intervened.

21 But that -- yes. It was, some months
22 it would be around 4 o'clock, but it
23 wouldn't be -- it would change. Every day
24 it gets -- after December it gets later
25 longer.

1 Q Okay.

2 A Because the sun stays up a minute or
3 two more each day, so it's --

4 Q Okay. And that's what I was asking
5 you at the beginning.

6 A There wasn't like a time on my watch
7 I said -- and the staff would help me.
8 People coming in in the afternoon would say,
9 "Do you know it got cloudy out this
10 afternoon," and so I, you know, would watch
11 and maybe leave two minutes earlier or five
12 minutes earlier that day. Or maybe they'd
13 say, "Oh, it's such a nice day, it's sunny,
14 you know, you'll have a good drive home," so
15 I could stay longer.

16 Q Okay. And that's what I was asking
17 you at the beginning about, whether it
18 changed each day or changed based on the
19 conditions. And it sounds like it did;
20 you'd look on the computer each day and see
21 when the sun would go up you, you'd check
22 the weather?

23 A And I did my best to stay every
24 minute I possibly could.

25 Q And work --

1 A It's not comfortable to be put in a
2 position -- I'm not a person who likes to be
3 late. That bothers me a lot. To me, on
4 time is five minutes early. So to be in
5 this position where I have a time that I'm
6 due there and a time on the schedule that
7 I'm supposed to go home, and not meet that,
8 was very difficult --

9 Q Okay.

10 A -- for me.

11 Q Okay. Let me just ask you this
12 question. There was a number of days that I
13 looked through the notes where there was
14 snow on roads. And on those days you might
15 have been a little bit late because you had
16 to call your daughter or have your husband
17 or someone else drive to in to work; right?

18 A Sometimes that happened.

19 Q Okay. Now whether or not you have a
20 disability, you would agree that some days
21 anybody could have trouble driving in to
22 work with the snow; right?

23 A Sure.

24 Q Were others expected -- if there was
25 snow on the ground or snow in the forecast,

1 Q It says you went to the mall. And
2 the entry right above says that you had
3 faxed a letter of resignation on March 24,
4 two days before. Do you see that?

5 A Uh-huh (yes).

6 Q And you'll just have to answer yes or
7 no just for the court reporter.

8 A Yes, I see that.

9 Q Okay. Why is it that you would visit
10 the store after resigning from your
11 employment?

12 A It says right there --

13 MR. EHRENBURG: I'm going to object
14 to the form. You can answer.

15 THE WITNESS: It says right there
16 that I was not -- I had received -- I had
17 been in tenure with the store long enough
18 to see other people quit with the company
19 for one reason or another. It's typical
20 behavior of superiors to contact that
21 person to discuss that with them. Many
22 times someone might say that they were
23 leaving the company, and the district
24 manager would call and try and get them to
25 stay.

1 quit at that time in the past couple weeks
2 weren't African-Americans; right?

3 A I don't know who quit.

4 Q Well, I mean --

5 A That was hearsay, and I just reported
6 what people were talking about when we were
7 in the store that day. And then I started
8 guessing as -- because I knew there was some
9 discontent. And I just guessed. I don't
10 know that that's what people told me or not.

11 Q Okay. Now it also says that on April
12 6th, if you turn the page P6789, discusses
13 in April of 2004 about your call to the
14 ethics hotline. Do you see that?

15 A Uh-huh (yes).

16 Q You'll just have to answer yes.

17 A Yes.

18 Q Now that was the first mention of the
19 ethics hotline that I had seen in your
20 notes. Is that accurate?

21 A I don't know. I'd have to reread my
22 notes to see.

23 Q Okay. Well, to your recollection, is
24 that the first time you had called the
25 ethics hotline at Express?

1 A Well, apparently not. It says, "Mike
2 from ethics hotline returned my call."

3 Q Okay. Well, he certainly wasn't
4 returning a call from '03; I mean, I'm
5 assuming it was close in time?

6 A I don't know. Relatively close.

7 Q Okay. Was the call he was returning
8 in April of 2004 the first call that you had
9 made to the ethics hotline?

10 A I don't recall.

11 Q You don't know if you ever made any
12 prior calls?

13 A Let me read this. Is this the first
14 listing, you say, of that?

15 Q Yes.

16 A (Witness reviews.)

17 I'm having trouble recalling that
18 scenario. I'd have to check -- you know
19 what ethics hotline is.

20 Q Well, why don't you tell me what it
21 is.

22 A If there's something going on in a
23 store, and you have either tried other
24 sources or you're not sure how widespread it
25 is, this is a source you can go to to talk

1 to someone in the company outside the store.

2 Q Okay.

3 A So say, for instance, there's theft
4 going on, and you're not sure who all is
5 involved, internal theft. You maybe don't
6 want to go to the manager because maybe the
7 manager's involved. So you would call up
8 this hotline so that they could investigate
9 it.

10 Q Okay. And why did you go to the
11 ethics hotline in April of 2004?

12 A I'm trying to remember what this
13 incidence was that I called ethics hotline
14 about.

15 Q Well, it was after your resignation?

16 A Well, I didn't call them after -- I
17 didn't start to call them after my
18 resignation. This is follow up.

19 Q So you're saying this April 2004 is
20 follow up from when you were an employee?

21 A I -- I think so.

22 Q You think so? Why wouldn't your
23 notes reflect a call to the ethics hotline
24 if you were making such a call?

25 A Well, my notes weren't focused on

1 that until this point.

2 Q Okay. And what would the call to
3 ethics hotline have been?

4 A I believe this was in relation to
5 people changing, having managers change
6 their sign in and sign out time to things
7 that were not true.

8 Q Okay. So just showed up and --

9 A I believe that's what this was.

10 Q Meaning if they showed up at 9:00,
11 they would change it to 8:30 --

12 A Along those lines.

13 Q -- or some other time?

14 A Along those lines, yes.

15 Q Okay. Why did you stop taking the
16 notes on April 21, 2004?

17 A I don't know.

18 Q Do you still take such notes today or
19 no?

20 A Yeah. Not as -- it depends on what's
21 going on in life.

22 Q And do you do that at the request of
23 counselor or do you just --

24 A No.

25 Q -- do your notes --

1 Q We're just about done. If you could
2 turn to P6785.

3 A (Witness complies.)

4 Q And I'm looking at February 27, 2004.
5 Now your notes reflect that you're off work
6 at this point on a medical leave. And
7 you're talking to Susan at HR direct and
8 you're asking her about a leave of absence
9 so you could shop for houses in VA, which
10 I'm assuming is Virginia. Do you agree with
11 that?

12 A Yes.

13 Q And get this one ready for market;
14 I'm assuming the house you were living in in
15 Delaware, you wanted to get that ready to
16 sell?

17 A Right.

18 Q Had you made the decision that you
19 were going to move to Virginia at this
20 point?

21 A Yes. That decision had been made
22 long before.

23 Q Okay. Now there was a discussion
24 about another option is to resign and if you
25 get placed in a position in Virginia within

1 30 days you would retain your tenure.

2 Do you recall that discussion with
3 Susan?

4 A That's what they said. But yeah.

5 Q And she was meaning that you could
6 just simply voluntarily resign, find a
7 position with Express in Virginia, and then
8 keep your tenure; is that what she was
9 telling you about?

10 A That's what it seems.

11 Q Okay. Did you consider that option?

12 A No, because I had already been
13 interviewed by the vice president and -- of
14 sales, and they had other career plans for
15 me, so I didn't need to resign and try and
16 find another job.

17 Q Vice president of sales for who?

18 A For Express.

19 Q And who was that?

20 A I'd have to look. I can't remember
21 now what his name was.

22 Q Okay. And --

23 A We've discussed this before.

24 Q And why isn't that reflected in your
25 notes if you told her that you had spoken

1 with the VP of sales and --

2 A I don't know that I discussed that
3 with her. She's an HR person at corporate.

4 Q Okay.

5 A My notes aren't every thought and --
6 you know, they're just notes of outstanding
7 things or something I want to remember.
8 It's not going to have everything I think
9 about or everything I say in here.

10 Q Okay. Now it skips -- your notes
11 skip from February 27, 2004, to March 15th,
12 2004. Do you see that?

13 A Yes, I see that.

14 Q Now it says on March 15, 2004, on
15 page P6786, "I went to VA." I'm assuming VA
16 is Virginia?

17 A Yes.

18 Q "House hunting for a week and a
19 half." Do you see that?

20 A Yes.

21 Q So that's probably why you didn't
22 take notes, because you were house hunting
23 in Virginia?

24 A Your guess is as good as mine.

25 Q Okay. And so you don't know why you

1 didn't take notes over that period?

2 A I can't remember.

3 Q Okay. Now it says that you're
4 playing phone tag over this period with the
5 doctor's secretary, trying to get an
6 extension faxed; is that right?

7 A I'd have to read that.

8 Q Do you see where your notes --

9 A (Witness reviews.)

10 Yes.

11 Q Okay. Now we went through your
12 exhibits the last time. Do you recall that
13 that last fax from your physician in March
14 actually released you to return to work?

15 A No, I don't recall without having it
16 in front of me. I can't recall.

17 Q Okay. So you don't know whether the
18 doctor extended it or actually said you had
19 to return to work or not on that day?

20 A I don't recall.

21 Q Okay. Now then it says, "Maybe I
22 could work at another store, but I couldn't
23 do full time 40 hours. I don't think if I
24 had to do all that traveling just to get
25 there."